

FILED

JUN 23 2010

**BEFORE THE DISCIPLINARY COMMISSION OF THE
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF AN APPLICATION) No. 09-6006
FOR REINSTATEMENT OF A RESIGNED)
MEMBER OF THE STATE BAR OF ARIZONA,)
)
MICKEY L. MAGNESS,) **DISCIPLINARY COMMISSION**
Bar No. 003014) **REPORT**
)
APPLICANT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on June 12, 2010, pursuant to Rules 64 and 65, Ariz.R.Sup.Ct., for review of the Hearing Officer's Report filed May 7, 2010, recommending reinstatement and that Applicant be required to complete 15 hours of continuing legal education ("CLE") for the reporting year ending June 30, 2010.¹ The Commission requested oral argument. Applicant and counsel for the State Bar were present. The State Bar does not oppose the reinstatement.

Decision

Having found no facts clearly erroneous, the seven members² of the Commission unanimously recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation that Applicant Mickey L. Magness be reinstated to the practice of law. The Commission further recommends the

¹ Applicant advised at oral argument that she has since completed the required CLE. The Hearing Officer inadvertently did not recommend the payment of costs for these proceedings.

² Commissioners Belleau and Horsley did not participate in these proceedings.

1 payment of costs of these reinstatement proceedings including any costs incurred by the
2 Disciplinary Clerk's office.³

3 Background

4 Applicant was admitted to practice law in Arizona on May 23, 1972 and resigned in
5 good standing on May 5, 2005. Pursuant to Rule 32(c)(11)(C), members who resign in good
6 standing are eligible for reinstatement in the same manner as members who are summarily
7 suspended. Rule 64(f) also applies as her Application for reinstatement was not filed within
8 two years of her resignation. Accordingly, she must submit to full reinstatement
9 proceedings as set forth in Rule 65 and demonstrate all elements required by Rule 65(b)(2)
10 which include rehabilitation, compliance with all discipline orders and rules, fitness to
11 practice and competency.

12 Applicant practiced law in Tucson until October 1986 and then moved to Seattle,
13 Washington. Applicant was admitted to the Washington State Bar in June 1990 and
14 voluntarily resigned in good standing in 2004. Applicant thereafter resigned from the
15 Arizona and Washington State Bar because she was not practicing law but was required to
16 pay dues and obtain CLE. Applicant moved back to Phoenix in February 1999 and was
17 employed by Qwest Communications until February 2007. In 2008, she received Social
18 Security Disability benefits because she is legally blind. Her blindness, however, has not
19 affected her ability to practice law as she uses specialized equipment to assist in reading.
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21 Although Applicant filed for bankruptcy in AZ in 1987 and again in 1998, the
22 Hearing Officer found no evidence of a pattern that would raise concerns regarding her
23 competency or fitness to practice. In addition, Applicant did not technically comply with
24 Rule 72 at the time of her resignation in AZ. She failed to notify clients, the court, and
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³ A copy of the Hearing Officer's Report is attached as Exhibit A.

opposing counsel of her resignation, (Rule 72(a)) and failed to file an affidavit certifying her compliance with Rule 72. Applicant had no active or pending clients at the time of resignation and did not notice that 72(e) was independent of Rule 72(a). The Hearing Officer found that this failure was unintentional and resulted in no prejudice.

Applicant advises at oral argument that if reinstated, she intends to practice law in the area of wills and probate, guardianship etc., as there is a great need for legal services for the elderly and disabled.

Conclusion

The Hearing Officer found that Applicant has proven by clear and convincing evidence her competence, fitness to practice law, compliance with all applicable discipline orders, and requirements regarding rehabilitation pursuant to Rule 65, Ariz.R.Sup.Ct. The Commission agrees and therefore adopts the Hearing Officer's recommendation for reinstatement and recommends the payment of costs of these proceedings.

RESPECTFULLY SUBMITTED this 23rd day of June 2010.

Pamela M. Ka
Pamela M. Katzenberg, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 23rd day of June 2010.

Copy of the foregoing mailed
this 23 day of June 2010, to:

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by Deann Barker

/mps

EXHIBIT

A

FILED

MAY 07 2010

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

**BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF AN
APPLICATION FOR
REINSTATEMENT OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**MICKEY L. MAGNESS,
Bar No. 003014**

Respondent.

No. 09-6006

**HEARING OFFICER'S
REPORT**

(Assigned to Hearing Officer 7M
Daniel P. Beeks)

Applicant Mickey L. Magness ("Magness"), a former member of the State Bar of Arizona who previously resigned in good standing, has filed an application to be readmitted to practice law in the State of Arizona ("the Application"). The State Bar of Arizona ("State Bar") supports the Application, provided Magness attends certain continuing legal education for the reporting year ending June 30, 2010. The State Bar did not present any evidence indicating that Magness was not currently fit to practice law, or that there was any significant likelihood of future ethical problems.

Based on the Application and the evidence presented at the hearing, and for the reasons discussed in more detail below, the Hearing Officer recommends that Magness be readmitted as an active member of the State Bar of Arizona.

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On the basis of the Application and the evidence presented by the parties, the Hearing Officer makes the following findings of fact, conclusions of law and recommendation.

1. Magness was admitted to the State Bar of Arizona in May 1972. See Magness's verified statement in support of reinstatement, dated December 30, 2009 (Magness Declaration").

3. Magness was admitted to the Washington State Bar in June 1990, and voluntarily resigned in 2004. (*Magness Declaration*).

-2-

1 5. Magness resigned from the Washington State Bar in 2004.
2 (*Magness Declaration*).

3
4 6. Applicant voluntarily resigned from the State Bar of Arizona in
5 2005; her letter of resignation was accepted by Order of the Supreme Court filed
6 on July 8, 2005. (*Magness Declaration*).

7 7. Magness resigned from the State Bar of Arizona and the
8 Washington State Bar because she was not actively practicing law, yet she
9 continued to have to pay bar dues and complete continuing legal education.
10 (*Magness Declaration*); (TR Magness at 13:9 – 14:13).¹

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12 8. Although Magness did not technically comply with Rule 72(e),
13 Ariz. R. Sup. Ct., at the time of her resignation from the State Bar of Arizona,
14 this failure was unintentional and resulted in no prejudice. Rule 72(a) requires an
15 attorney who has resigned to mail written notice of the resignation to clients in
16 pending matters, co-counsel in pending matters, opposing counsel or parties in
17 pending matters, and courts handling pending matters. Rule 72(e) requires that
18 an attorney who has resigned to file an affidavit certifying compliance with Rule
19 72(a). At the time she resigned, Magness had no active clients and no pending
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23 ¹ References to the hearing transcript will be designated by "TR" for transcript,
24 followed by the name of the witness, followed by beginning page and line, and ending
25 page and line.

1 matters, so there were no persons entitled to such written notice. (TR Magness
2 25:15 – 25:25). Magness failed to file the affidavit required by Rule 72(e)
3 because she did not notice that this subsection of the rule was independent of
4 subsection (a). (TR Magness at 26:9 – 26:16).

6 9. At the time of her resignation from the State Bar of Arizona,
7 Magness was a member in good standing. (*Magness Declaration*).

9 10. At the time of both resignations, there were no complaints or
10 disciplinary proceedings pending involving Magness, and no complaints have
11 been filed against her since her resignation. (*Magness Declaration*).

12 11. Magness continued to be employed in the collections department at
13 Qwest Communications in Phoenix until February, 2007. (TR Magness at 14:14
14 – 14:17).

16 12. In 2008, Magness began drawing Social Security Disability benefits.
17 She was entitled to such benefits because she is legally blind and has other health
18 issues. (TR Magness at 15:2 – 15:13). Magness's blindness does not adversely
19 affect her ability to practice law. Magness was legally blind when she practiced
20 law in the past, and it did not adversely affect her ability to practice. She also
21 uses specialized equipment to assist her in reading, including extra-large
22 computer monitors. (TR Magness at 23:2 – 23:22).

1 13. Magness filed bankruptcy in Arizona on February 5, 1987 (case
2 #87-00210) and again on September 16, 1998 (case #98-11724). Magness
3 satisfactorily explained the circumstances leading up to these bankruptcy filings,
4 and they do not appear to establish any sort of pattern that would raise concerns
5 about her competence or fitness to practice law.
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7 14. Magness does not owe any amounts to the State Bar of Arizona
8 Client Protection Fund. (Declaration of Karen Weigand attached to the
9 Application)
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11 15. Magness filed her Motion for Reinstatement on December 30, 2009.
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13 16. Magness has not filed any prior Motions or Applications for
14 Reinstatement to the State Bar of Arizona.

15 **STANDARD OF PROOF/BURDEN OF PROOF**

16 17. Pursuant to Rule 32(c)(11)(C), Ariz. R. Sup. Ct., members of the bar
17 who have resigned while in good standing are eligible for reinstatement to
18 membership in the same manner as members summarily suspended under Rule
19 62. In both situations, reinstatement is governed by the procedures set forth in
20 Rule 64(f). Rule 64(f)(1) provides that if an application for reinstatement is not
21 filed within two years following resignation or suspension, the full reinstatement
22 procedure applies, as set forth in Rule 65, Ariz. R. Sup. Ct.
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1 18. In order to be reinstated, Magness bears the burden of proof, and
2 must demonstrate by clear and convincing evidence all of the elements required
3 in Rule 65(b)(2), Arizona Rules of the Supreme Court, including: rehabilitation;
4 compliance with all applicable discipline orders and rules; fitness to practice; and
5 competence.
6

7 19. In a non-disciplinary reinstatements, the focus of the inquiry is on
8 the lawyer's current fitness to practice and competence, and the protection of the
9 public.
10

11 **COMPLIANCE WITH ALL DISCIPLINARY ORDERS AND RULES**

12 20. This is not a discipline-related reinstatement. To the extent this
13 factor applies, the Hearing Officer finds that Magness has complied with all such
14 Rules and Orders of the Supreme Court.
15

16 21. Magness did not initially submit copies of her tax returns, as
17 required by Rule 65(a)(2)(c), because she did not believe they were relevant and
18 had been informed by Supreme Court staff that the requirement to submit income
19 tax returns only applied to reinstatements from disciplinary suspensions. (TR
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1 Magness 20:1 – 20:12). Magness later submitted her income tax returns for 2005
2 through 2008. (Exhibit 2 [filed under seal]; TR Magness 37:13 – 37:16).²
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4 22. Magness has provided, or will provide, all required supporting
5 documentation, including her tax returns for 2009, as required by Rule
6 65(a)(2)(C) prior to reinstatement, and has otherwise complied with Rule 65,
7 Ariz. R. Sup, Ct.
8

9 **REHABILITATION/FITNESS TO PRACTICE**

10 23. Evidence supporting rehabilitation necessarily relates to fitness to
11 practice, particularly in cases involving a non-disciplinary reinstatement
12 following a lengthy period of resignation.
13

14 24. Applicant is generally handling her personal and business affairs in
15 a responsible, conscientious way. Magness has experienced some financial
16 difficulties since being laid off from her former employment with Qwest
17 Communications. The evidence indicates that Magness has slowly adapted her
18 lifestyle to account for the significant decrease in her income. Rather than filing
19 bankruptcy, she has attempted to work with her creditors. (TR Magness 15:14 –
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23 ² Although they are not in the record, because they were filed after the Hearing,
24 the Hearing Officer understands that Magness has filed her 2009 tax returns, and
25 provided copies to Bar Counsel. (TR Magness 11:16 – 11:22).

1 15:24). There was no evidence that these financial difficulties reflect negatively
2 on Magness's competence or fitness to return to the active practice of law.

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4 25. Testifying on her own behalf, Applicant stated that she understands
5 and appreciates the requirements of membership, and she has a strong support
6 structure and a new energy and focus to bring to her profession, and more
7 importantly, to her life in general. Concerning Applicant's fitness to practice,
8 Applicant stated she is bright and capable, and a person of good character.
9

10 26. The State Bar presented no testimony or evidence that suggested
11 that Magness was not currently fit to practice law.

12
13 **COMPETENCY**

14 27. Magness does have a prior disciplinary history. In 1995, Magness
15 was censured by the Arizona Supreme Court in matter #95-0614. This censure
16 was reciprocal discipline based upon a public reprimand issued to Magness by
17 the Disciplinary Board of the Washington State Bar Association. This discipline
18 arose out of Magness sharing attorney's fees with a non-attorney, assisting a non-
19 attorney in the practice of law, and practicing with a law office owned by a non-
20 attorney. Magness self-reported this conduct when she became aware that the
21 person she was working with was not a licensed attorney (TR Magness 35:8 –
22 35:10). Magness continued to practice without incident for several years after
23 receiving these sanctions.
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1 28. The Hearing Officer does not believe that this one incident over the
2 course of Magness's lengthy legal career indicates that she lacks the character
3 and fitness to practice law, or that she is a danger to the public in the future. *In re*
4 *Rivkind*, 164 Ariz. 154, 160, 791 P.2d 1037, 1043 (1990).

6 **APPLICANT'S POSITION**

7 29. Magness contends that the evidence presented in this matter
8 appeared to be truthful, credible and would support Magness being reinstated.
9

10 30. Magness contends that she has produced clear and convincing
11 evidence of her competency, fitness to practice, and compliance with applicable
12 discipline orders, and that to the degree applicable, she has met the requirements
13 of *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004), regarding rehabilitation.
14

15 **STATE BAR'S POSITION**

16 31. Based on the application and the evidence presented in the hearing
17 of March 25, 2010, the State Bar believes that Applicant has carried her burden
18 of proof to show current competency and fitness to practice and compliance with
19 applicable disciplinary rules, and has met other factors set forth by Supreme
20 Court Rule 65, as further set forth in *Arrotta*.
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22 32. The State Bar recommended that Magness be reinstated to the
23 practice of law subject to the payment of any dues owed, filing State and Federal
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1 income tax returns for 2009 (if this has not already been done), and providing
2 copies of such filings as required by Rule 65(a)(2)(C), Ariz. R. Sup. Ct.

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4 33. The State Bar does not believe that Magness is required to complete
5 15 hours of continuing legal education for each year that she was resigned in
6 good standing. (TR Bar Counsel 7:4 – 10:4). The State Bar asserts that although
7 Rule 32(c)(11)(C)(ii), indicates that resigned persons in good standing are
8 required to provide proof of completion of continuing legal education for all of
9 the hours they would have been required to take had the person remained a
10 member in good standing, Rule 32(c)(11)(C) earlier provides that reinstatement
11 of persons who are resigned in good standing is governed by Rule 64(f). Rule
12 64(f)(1), in turn, distinguishes between persons who have been suspended for
13 less than two years, and those suspended for more than two years. The final
14 sentence of Rule 64(f)(1) provides that “If an application is not filed within two
15 years from the effective date of suspension, the reinstatement procedure set forth
16 in Rule 65 of these rules shall apply.” Unlike reinstatements made within two
17 years of an administrative suspension, Rule 65 requires a hearing in which the
18 applicant must establish by clear and convincing evidence of competence and
19 fitness to practice. Unlike the administrative reinstatement provided by Rule
20 64(f)(1), Rule 65 does not contain any requirement for a specific number of
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1 continuing legal education hours. (TR Bar Counsel 7:4 – 10:4). The applicant is
2 just required to establish competence by clear and convincing evidence.

3 4 CONCLUSIONS OF LAW

5 34. Magness has submitted all of the information and documentation
6 required by Rule 65(a). Magness did not initially submit her tax returns, because
7 she did not believe they were relevant and had been informed by Supreme Court
8 staff that the requirement to submit income tax returns only applied to
9 reinstatements from disciplinary suspensions, and did not necessarily apply to
10 resignation cases. (TR Magness 20:1 – 20:12). Magness later submitted her
11 income tax returns for 2005 through 2008. (Exhibit 2 [filed under seal]; TR
12 Magness 37:13 – 37:16).³

15 35. Magness substantially complied with the requirements of Rule 72
16 upon her resignation. *See In re Gallego*, Disciplinary Commission Report No.
17 09-6001 at 5:2 – 5:7 (March 4, 2010) (finding substantial compliance with Rule
18 72 sufficient in a reinstatement matter). Because Magness had no pending
19 matters, there were no persons entitled to notice of her resignation, and the filing
20 of an affidavit pursuant to Rule 72(e) would have been a needless formality.
21

23 ³ Although they are not in the record, because they were filed after the Hearing,
24 the Hearing Officer understands that Magness has filed her 2009 tax returns, and
25 provided copies to Bar Counsel.

36. The evidence presented in the Application, combined with the testimony and exhibits presented at the Hearing, demonstrates by clear and convincing evidence that Magness is in compliance with all discipline orders and rules, is fit to practice law, and is competent to practice law. Rule 65(b)(2).

37. The Hearing Officer concludes that the State Bar's interpretation of the rules regarding continuing legal education hours for persons seeking reinstatement more than two years after resigning in good standing is correct, and that Magness is not required to provide proof of completion of 15 hours of continuing legal education for each year she was resigned from membership. This conclusion is further supported by the treatment of "inactive members" under Rule 32(c)(4). Pursuant to Rule 45(b)(1), inactive members are exempt from the mandatory continuing legal education requirements. Inactive members can be reinstated pursuant to Rule 32(c)(4) without having to complete 15 hours of continuing legal education for each year they were inactive. There seems to be no logical reason to treat inactive and resigned in good standing members differently in this regard.

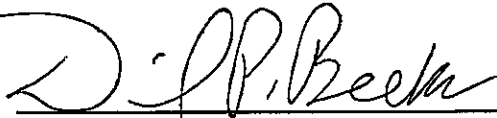
RECOMMENDATION

The Hearing Officer hereby recommends:

A. That Magness be reinstated.

1 B. That Magness be required to complete 15 hours of continuing
2 legal education for the reporting year ending June 30, 2010.

3 **DATED** this 7th day of May, 2010.
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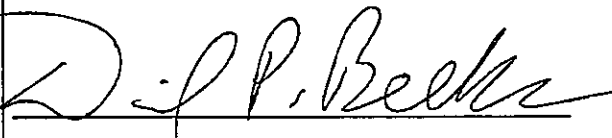
7 Daniel P. Beeks
8 Hearing Officer 7M

9 Original filed with the Disciplinary Clerk
10 this 7th day of May, 2010.

11
12 Copies of the foregoing mailed this 7th day
13 of May, 2010, to:

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26 Mailed & Hand Delivered to all parties
27 May 14, 2010 by:
28 Deann Barker